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August 12, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
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**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

**Re: Amendment of Section 73.606(b),  
Table of Allotments, Television  
Broadcast Stations  
(Kansas city, Missouri)**

Dear Mr. Caton:

On behalf of KCWB-TV, Inc., permittee of station KCWB (formerly KAIZ),  
Channel 32, Kansas City, Missouri, we are transmitting herewith for filing an original and four  
copies of "Comments" in the above proceeding.

A "Return Copy" of this filing is also enclosed. Please date-stamp the "Return  
Copy" and return it to confirm your receipt.

Should you have any questions, please contact either undersigned counsel.

Respectfully submitted,

Meredith S. Senter, Jr.  
Renee L. Roland

RLR/kkj  
Enclosures

cc(w/encl.): Mr. Bernie R. Segal (By Hand Delivery)  
Mr. Robert Liepold

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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.606(b),	)	MM Docket No. 96-134
Table of Allotments,	)	RM-8817
TV Broadcast Stations.	)	
(Kansas City, Missouri)	)	

To: Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

## COMMENTS

KCWB-TV, Inc. (formerly known as TV-32, Inc.), permittee of television station KCWB (formerly KAIZ), Kansas City, Missouri, hereby comments on the Notice of Proposed Rule Making (released June 21, 1996) ("NPRM"), in the above-captioned proceeding.

On April 30, 1996, KCWB-TV filed a petition requesting the institution of a rule making proceeding looking toward the amendment of Section 73.606(b) of the Commission's rules, the TV Table of Allotments, 47 C.F.R. § 73.606(b), to substitute commercial Channel 29 for Channel 32 at Kansas City, Missouri. As explained in the Petition, KCWB-TV is compelled to seek the substitution of a new channel for Channel 32 for technical reasons. KCWB-TV demonstrated in its petition that UHF Channel 29 may be substituted for UHF Channel 32, Kansas City, Missouri consistent with the Commission's minimum distance separation requirements, with

a change of the reference coordinates for the unused and unapplied-for noncommercial educational allocation of Channel \*22, St. Joseph, Missouri.<sup>1</sup> KCWB-TV also showed that a station operating on Channel 29 for the proposed reference coordinates would provide full principal community contour service over Kansas City, KCWB's community of license. Finally, KCWB-TV showed that its proposal would be consistent with the Commission's current "freeze" on new television channel allocations within the minimum co-channel separation distance of certain major markets, including Kansas City, and explained that the proposed channel substitution may be achieved without adverse impact on the community and the environment and without any additional governmental approvals.

In response to the Petition, the Commission issued the NPRM in which it tentatively concluded that KCWB-TV's proposal would serve the public interest because the proposed substitution would permit the initiation of a new television service in Kansas City, Missouri, with complete city grade coverage to the community, without disrupting any existing service. NPRM at ¶¶ 2, 4. The Commission also concluded that KCWB-TV had sufficiently demonstrated that it is unable to operate a station on Channel 32 at Kansas City in compliance with the Commission's minimum distance separation requirements and stated that it would not accept competing expressions of interest in the use of television Channel 29 at Kansas City. NPRM at ¶¶ 3,4. Consequently, the Commission proposed to modify KCWB-TV's construction permit for station KCWB to specify operation on Channel 29 and to change the reference

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<sup>1</sup> The Petition proposes to change the reference coordinates for Channel \*22, St. Joseph, Missouri to 39° 05' 01" North, 94° 30' 57" West.

coordinates for vacant Channel \*22 at St. Joseph, Missouri. NPRM at ¶ 4. KCWB-TV strongly supports the Commission's conclusions and urges the Commission to immediately implement its proposal to substitute Channel 29 for Channel 32 at Kansas City, Missouri.

In support of the channel substitution proposal, KCWB-TV reaffirms the following. On August 16, 1994, the FCC issued the construction permit for station KCWB. However, when KCWB-TV applied for a conditional use permit to construct the tower, it encountered wide-spread and well-organized opposition from neighboring property owners which culminated in the rejection of KCWB-TV's application for Special Use Permit by the Board of Aldermen for the City of Lees Summit, Missouri. Although KCWB-TV searched for alternate sites, the area in which KCWB-TV may locate a tower for KCWB on Channel 32 is severely constrained by the Commission's minimum separation and community-of-license coverage requirements. Further, within the "fully spaced" area, KCWB-TV is further constrained by Federal Aviation Administration ("FAA") air-hazard limitations including existing instrument approach procedures to two area airports and the potential violation of visual flight rules. Finally, there are no existing, fully spaced tall towers. Instead, all existing towers are significantly short-spaced to KBIN-TV, Channel 32, Council Bluffs, Iowa, and, in most cases, to a Channel 18 allotment in Carrollton, Missouri. Accordingly, KCWB-TV cannot obtain a permit from the local zoning authorities to construct station KCWB on Channel 32 as authorized, and there is no fully spaced site available for which KCWB-TV could obtain zoning approval.

As noted in the NPRM the substitution of Channel 29 for Channel 32 at Kansas City will not create a new allotment or reduce the amount of spectrum currently authorized for

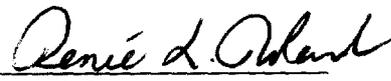
possible advanced television use in Kansas City. NPRM at ¶¶ 2,3. KCWB-TV agrees with this determination. In particular, because the proposed use of Channel 29 is mutually exclusive with KCWB-TV's existing authorization for Channel 32, the substitution of Channel 29 for Channel 32 will not result in a "new" allotment, but rather simply change the frequency of an existing allotment. See Advanced Television Systems, 52 Fed. Reg. 28346 (July 29, 1987). In addition, because the substitution of Channel 29 will permit KCWB-TV to operate KCWB from the existing de facto antenna farm, construction of the new station will have less (if any) adverse environmental impact. Finally, because the tower has been approved by the FAA and local governmental authorities, no other governmental approvals are necessary and KCWB-TV may begin construction and operation of station KCWB in the immediate future.

Accordingly, KCWB-TV urges the Commission to implement the channel substitution as proposed in the NPRM without delay and to modify the construction permit for

station KCWB to reflect operation on Channel 29. KCWB-TV hereby reaffirms its present intent to apply for the channel if allotted and, if authorized, to build the station promptly.

Respectfully submitted,

KCWB-TV, Inc.

By:   
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